

92I-097 (released December 24, 1992). [Order, FCC 92I-097 (released December 24, 1992) (Reading Ex. 22)] Monroe received the \$17+ Million payment in two installments in the first half of 1993. [Joint Request for Approval of Settlement Agreement, Attachment 1, ¶ 6 (Reading Ex. 19 at 13-14); Order, FCC 92I-097 (released December 24, 1992), ¶ 3 (Reading Ex. 22 at 2); Harriscop of Chicago, Inc., 8 FCC Rcd 2753 (1993)]

82. Howard Gilbert ("Gilbert"), Secretary and Vice President of Adams Communications Corporation ("Adams"), believes that, although Monroe never actually constructed or operated the station for which it had applied, the Monroe venture was successful. [Gilbert Testimony, Tr. 1116:3] Gilbert, a long-time attorney who considers himself a "very skilled lawyer," is and always has been Adams' attorney with respect to all corporate matters. [Gilbert Testimony, 1014:16-17, Tr. 2519:20-2520:3] Gilbert measured the "success" of the Video 44 challenge by the fact that it resulted in a Commission precedent against subscription television broadcasting and pornographic programming. [Gilbert Testimony, Tr. 1115:3-1116:3] This testimony omitted any mention of the fact that Monroe "received a huge sum of money" in the settlement as a reason the Video 44 challenge could be considered a success. [Gilbert Testimony, Tr. 1007:3-4]

## 2. Home Shopping

83. At approximately the same time Monroe was receiving that "huge sum of money" for settling the Video 44 challenge, its principals became concerned with "home shopping" programming. [Gilbert Testimony, Tr. 1114:2-9] At the start of that year, the Commission adopted a Notice of Proposed Rulemaking to address the issue of whether home shopping broadcast stations were serving the public's interest. [Notice of Proposed Rulemaking, 8 FCC Rcd 660 (released January 28, 1993)] As part of that review, the Commission solicited public comments on the home shopping issue. [Notice of Proposed Rulemaking, 8 FCC Rcd 660, ¶ 16 (released January 28, 1993)] Although the Monroe/Adams principals followed the developments of the Commission's review of the home shopping issue, neither Monroe/Adams nor any of its principals submitted any comments to the Commission with respect to that issue. [Gilbert Testimony, Tr. 1133:19-22, 2468:9-2469:5] Gilbert described his group as public interest crusaders, but conceded that, apart from the Monroe/Adams applications, no one in the group had done anything to advance public service in broadcasting other than by making financial contributions to organizations working on that issue. [Gilbert Testimony, Tr. 1110:17 – 1111:10]

84. In a Report and Order released on July 19, 1993, the Commission concluded that home shopping stations serve the public interest.

[Home Shopping Report and Order, 8 FCC Rcd 5321 (1993)] Adams was aware of that ruling. [Gilbert Testimony, Tr. 1057:13-1058:18]

85. Notwithstanding the Commission's ruling, in or around mid-1993, Monroe/Adams decided to pursue a comparative renewal challenge to a television station broadcasting "home shopping" programming. [Gilbert Testimony, Tr. 2473:15-2474:7] To that end, in or about July 1993, Gilbert instructed B&C to locate home shopping channels that were coming up for renewal. [Gilbert Testimony, Tr. 1121:16-25, 2471:10-16] On or about July 16, 1993, B&C provided Monroe/Adams with a list of all home shopping channels throughout the country whose licenses were coming up for renewal. [Letter from Harry Cole to Howard Gilbert dated July 16, 1993 (Adams Ex. 66 at 1-2)]

### 3. Adams Communications Corporation

86. Adams was formed for the purpose of challenging the renewal of television stations airing home shopping programming. [Gilbert Decl., ¶ 7 (Reading Ex. 24)] Although Adams takes the position that home shopping *programming*, generally, does not serve the public interest, it concedes that a home shopping *station* could still provide sufficient other local programming and public service to serve the public interest. [Gilbert Testimony, Tr. 1060:14-19, 1041:20-1042:5, 2468:9-2469:5, 2473:15-20, 2497:22-2498:6]

87. Adams' selection of which home shopping station to challenge was based solely on which station's license was the soonest to come up for renewal. [Gilbert Testimony, Tr. 1123:9-1124:8] Adams was indifferent as to which home shopping station it challenged or whether the station it challenged was profitable. [Gilbert Testimony, Tr. 1065:21-1066:3, 1120:20-1121:13] Nor did Adams care where in the country the "home shopping" station it would challenge was located. [Gilbert Testimony, Tr. 1119:7-1124:9]

88. On November 23, 1993, Adams was incorporated in Massachusetts. [Articles of Organization (Reading Ex. 71); Gilbert Testimony, Tr. 2474:8-10; 2517:8-10] With the exception of Elinor Woron, a minor shareholder, all of the principals of Adams were also principals of Monroe. [Gilbert Testimony, Tr. 996:18-23; Amendment to Application (Reading Ex. 10 at 54)] With the exception of Elinor Woron, who resided in Boston, Massachusetts, all of the principals of Adams are from the area in or around Chicago, Illinois. [Adams' June 30, 1994 Application for Channel 51, Reading, Pennsylvania ("Application") (Reading Ex. 10 at 5-8); Amendment to Application (Reading Ex. 10 at 54)]

89. On August 31, 1998, Adams was involuntarily dissolved by the Commonwealth of Massachusetts for failing to file Annual Reports. [Certificate of Dissolution (Reading Ex. 72)]

**4. Adams' Aborted Challenge of Channel 66, WSHH in Marlborough, Massachusetts**

90. According to the list provided by B&C, the next station to come up for renewal in time for Adams to challenge was station WSHH, Channel 66 in Marlborough, Massachusetts ("Channel 66"), near Boston, on December 1, 1993. [List of full-power television stations licensed to subsidiaries of the Home Shopping Network (Adams Ex. 66 at 2); Gilbert Testimony, Tr. 2474:8-18] Adams pursued its contemplated challenge for Channel 66 by hiring a real estate broker to locate a possible antenna site, hiring "a young man and his cohorts" to tape two weeks worth of WSHH's programming, reviewing that tape, and talking to local residents. [Gilbert Testimony, Tr. 2474:19-2465:20]

91. Adams was, ultimately, unable to locate a suitable transmitter site and, in late February 1994, abandoned its efforts to challenge Channel 66. [Gilbert Testimony, Tr. 2475:21-2476:11, 2478:15-17] Adams never made any effort to buy Channel 66 outright. [Gilbert Testimony, Tr. 2530:13-16] Adams never made any effort to determine the value of Channel 66. [Gilbert Testimony, Tr. 2530:17-19] Adams made no effort to determine the potential cost of buying Channel 66 outright. [Gilbert Testimony, Tr. 2530:20-22] Adams never made any effort to determine Channel 66's profitability. [Gilbert Testimony, Tr. 2530:23-25]

**5. Adams' Challenge of Channel 51, WTVE in Reading, Pennsylvania**

92. After Channel 66, the next home shopping station to come up for renewal was WTVE, Channel 51, in Reading, Pennsylvania. [Gilbert Testimony, Tr. 1042:11-21] Adams chose to challenge WTVE because it was the first home shopping station to come up for renewal after Adams decided to abandon its challenge for Channel 66. [Gilbert Testimony, Tr. 1123:15-1124:2, 2476:12-18]

93. None of the Adams principals have ever lived in or around Reading, Pennsylvania. [Gilbert Testimony, Tr. 1067:2-4] Nor does Adams have an interest in public service broadcasting in Reading, Pennsylvania, beyond its purported interest in public service broadcasting in general. [Gilbert Testimony, Tr. 1019:19-22. Indeed, Adams' principals apparently do not particularly care for the City of Reading. [Gilbert Testimony, Tr. 1119:17-18 ("This isn't a great place to be, Reading. It's hard to get to, all kinds of things.")]

94. On June 30, 1994, Adams filed its application against WTVE. [Application (Reading Ex. 10)] At the time it submitted its application, Adams estimated that it would cost \$4.5 million to construct and operate the requested facility for three month without revenue. [Application (Reading Ex. 10 at 18); Gilbert Testimony, Tr. 1109:12-19] That estimate was subsequently increased to \$7 million. [Amendment to Application (Reading Ex. 10 at 55)]

95. Prior to the time Adams filed its application, Gilbert never personally watched WTVE. [Gilbert Testimony, Tr. 1064:24-1065:1] Although, at all relevant times, Gilbert was aware that every television station has to make its public inspection file available to interested parties, Adams did not review WTVE's public inspection files. [Gilbert Testimony, Tr. 1011:18-21, 2541:16-18]. Nor did Adams retain an expert or consultant to evaluate WTVE's programming. [Gilbert Testimony, Tr. 2540:19-22]

96. Prior to filing its application, Adams never prepared a business plan for operation of a station in Reading. [Gilbert Testimony, Tr. 1109:22-24] Adams never discussed specific staffing needs for the station. [Gilbert Testimony, Tr. 1107:15-109:2] Adams never made any effort to determine the value of WTVE. [Gilbert Testimony, Tr. 1066:4-9] Adams never made any effort to determine WTVE's profitability, even though Adams knew that Reading had recently been in bankruptcy. [Gilbert Testimony, Tr. 1110:13-16, 1065:21-1066:3]

97. Prior to filing its application, Adams made no effort to buy WTVE outright or even to determine the potential cost of buying WTVE outright. [Gilbert Testimony, Tr. 2541:19-22] In fact, Adams has never sought to buy outright any television station, anywhere, or even sought to locate any television stations that might be for sale. [Gilbert Testimony, Tr. 2542:1-6] Adams' stated reason for not attempting to purchase a station is

that doing so would not result in an FCC precedent against home shopping.  
[Gilbert Testimony, Tr. 1118:21-1119:4]

**a. Gilbert's Survey**

98. Between February and June 1994, Gilbert, on behalf of Adams, made 3 or 4 trips to Reading. [Gilbert Testimony, Tr. 2475:21-2476:11, 2476:19-24, 2478:15-17, 2538:7-14] At no time during any of these trips did Gilbert watch WTVE. [Gilbert Testimony, Tr. 1064:24-1065:1] During these trips, Gilbert informally interviewed 30 to 40 people. [Gilbert Testimony, Tr. 2476:19-2477:1, 2538:15-17] The interviews were conducted at business establishments, including malls and restaurants. [Gilbert Testimony, Tr. 2538:18-20] Gilbert did not conduct any interviews at peoples' homes. [Gilbert Testimony, Tr. 2538:21-24] Gilbert did not ask for the names of the people he interviewed, nor did he make a written record of the interviews. [Gilbert Testimony, Tr. 2538:25-2539:5] Gilbert stated that none of the people he interviewed were aware of WTVE. [Gilbert Testimony, Tr. 2539:6-10]

**b. Adams' Unsuccessful Attempt To Tape  
WTVE's Programming**

99. In May 1994, Gilbert hired Paul Sherwood to tape the "home shopping channel." [Gilbert Testimony, Tr. 2483:13-2484:10, 2539:3-5; Sherwood Testimony, Tr. 2139:11-15; 2154:17-2156:1] Gilbert was referred to Mr. Sherwood by Gilbert's daughter who worked with Sherwood's brother in



Chicago. [Gilbert Testimony, Tr. 2484:11:16; Sherwood Testimony, Tr. 2138:13-22] Sherwood is not a professional media consultant but a computer systems consultant. [Sherwood Testimony, Tr. 2137:11-16, 2149:22-24] Sherwood has no expertise in analyzing or evaluating the content of television programming. [Sherwood Testimony, Tr. 2149:25-2150:6] Nor does he have any expertise in analyzing or evaluating the public service performance of television stations. [Sherwood Testimony, Tr. 2150:7-14]

100. At the time Gilbert hired Sherwood for the taping job (and at the time of the taping), Sherwood lived in Chester Springs, Pennsylvania, approximately 30 miles from Reading. [Sherwood Testimony, Tr. 2138:23-2139:1, 2147:7-17, 2157:5-15] At the time Gilbert hired Sherwood for the taping job (and at the time of the taping), Sherwood lived in a location serviced by Suburban Cablevision. [Sherwood Testimony, Tr. 2147:7-2148:4] At that time, Suburban Cablevision did not carry WTVE. [TV Times from the Reading Eagle for the week of May 29 to June 4, 1994 (Adams Ex. 11)]

101. To the best of Mr. Sherwood's recollection, Gilbert's initial instructions were to tape the "home shopping channel." [Sherwood Testimony, Tr. 2139:11-2140:8] In fact, to the best of Mr. Sherwood's recollection, Gilbert never mentioned WTVE or Channel 51. [Sherwood Testimony, Tr. 2139:16-2140:8]<sup>14</sup> Gilbert never told Sherwood the precise

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<sup>14</sup> It is not clear whether Gilbert knew the call sign or channel number of the station whose license Adams intended to challenge. Several years after the taping, Gilbert described the station as "Station WNET (T.V.) in Redding,

purpose for the taping. [Sherwood Testimony, Tr. 2144:6-11, 2145:10-20, 2146:13-17]

102. As instructed by Gilbert, on June 1, 1994, Sherwood recorded 24 hours of the "home shopping channel." [Sherwood Testimony, Tr. 2148:9-13; Gilbert Testimony, Tr. 2485:16-2486:3] The June 1, 1994 recording was not of WTVE but of the "Home Shopping Club" cable channel. [Mattmiller Testimony, ¶ 5 (Reading Ex. 47 at 1-2); Gilbert Testimony, Tr. 2477:14-2478:12; 2488:20-2489:7; Gilbert Decl., ¶ 13 (Reading Ex. 24 at 5)] The June 1, 1994 recording contains not a single station identification for WTVE or Channel 51 in Reading, but rather contains hourly identifications for the "Home Shopping Club." [Mattmiller Testimony, ¶ 5, 7 (Reading Ex. 47 at 1-2)] In addition to the hourly identifications of the "Home Shopping Channel," the June 1, 1994, recording contains a number of longer network identifications, lasting approximately 30 seconds, consisting of a depiction of the Home Shopping Club logo, the words "Home Shopping Club" being sung to a jingle, and the following voiceover announcement:

"You're watching America's original shop at home television service, bringing you 24 hours of savings, fun and excitement every day. Live from Tampa Bay, Florida, it's the Home Shopping Club."

[Mattmiller Testimony, ¶ 8 (Reading Ex. 47 at 2)] The June 1, 1994 recording contains not a single commercial advertisement, but rather

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Pennsylvania." [Letter from Gilbert to Swanson, dated April 22, 1999]

contains hourly promotional announcements for upcoming segments of the Home Shopping Club. [Mattmiller Testimony, ¶ 6 (Reading Ex. 47 at 2)]

103. Gilbert claims to have reviewed the June 1, 1994 recording. [Gilbert Testimony, Tr. 2487:13-22] Based on his review of the June 1, 1994 recording, and despite the “painfully evident” fact that the June 1, 1994 recording was not of WTVE, Gilbert instructed Sherwood to continue to record the programming, 24 hours a day, for the period from June 13 to June 30, 1994. [Gilbert Testimony, 2477:14-2478:12, 2489:23-2490:4; Sherwood Testimony, Tr. 2149:2-13; Mattmiller Testimony, ¶ 3, Attachment B (Reading Ex. 47 at 1, B1-B3)]

104. As instructed by Gilbert, Sherwood recorded, 24 hours a day, of the “home shopping channel” for the period from June 13 through June 30, 1994. [Sherwood Testimony, Tr. 2148:9-13; Gilbert Testimony, Tr. 2489:23-2490:4; Mattmiller Testimony, ¶ 3, Attachment B (Reading Ex. 47 at 1, B1-B3)] To the best of Mr. Sherwood’s recollection, during this period, he spoke once with Gilbert. [Sherwood Testimony, Tr. 2149:2-16]

105. Mr. Sherwood forwarded the June 13 through June 30, 1994 recordings to Gilbert in two separate batches. [Gilbert Testimony, Tr. 2491:6-10] Gilbert claims to have received the first batch (June 13 through June 21) “a number of days before the end of June.” [Gilbert Testimony, Tr. 2491:11-16] Gilbert claims to have reviewed the first batch of recordings in

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(Reading Ex. 57)]

“fast forward” and stopping the “fast forward” when he heard the PSA music and reviewing the PSAs in real time. [Gilbert Testimony, Tr. 1134:25-1135:14, 2491:17-2492:1]

106. The June 13-June 21 batch of recordings were not of WTVE but of the “Home Shopping Club” cable channel. [Mattmiller Testimony, ¶ 5 (Reading Ex. 47 at 1-2); Gilbert Testimony, Tr. 2477:14-2478:12; Gilbert Decl., ¶ 13 (Reading Ex. 24 at 5)] Like the June 1, 1994 recording, the June 13-June 21 batch of recordings contain not a single station identification for WTVE or Channel 51 Reading, but rather contain hourly identifications for the “Home Shopping Club.” [Mattmiller Testimony, ¶ 5, 7 (Reading Ex. 47 at 1-2)] In addition to the hourly identifications of the “Home Shopping Channel,” the June 13-June 21 batch of recordings contain numerous longer network identifications, lasting approximately 30 seconds, consisting of a depiction of the Home Shopping Club logo, the words “Home Shopping Club” being sung to a jingle, and the following voiceover announcement:

“You’re watching America’s original shop at home television service, bringing you 24 hours of savings, fun and excitement every day. Live from Tampa Bay, Florida, it’s the Home Shopping Club.”

[Mattmiller Testimony, ¶ 8 (Reading Ex. 47 at 2)] The June 13-June 21 batch of recordings contains not a single commercial advertisement, but rather contains hourly promotional announcements for upcoming segments of the Home Shopping Club. [Mattmiller Testimony, ¶ 6 (Reading Ex. 47 at 2)]

107. Gilbert received the second batch of recordings (June 22 through June 30) from Mr. Sherwood after Adams had filed its application. [Gilbert Testimony, Tr. 2493:9-12; Adams Ex. 77 at 1] Like the others, the June 22-June 30 batch of recordings were not of WTVE, but of the "Home Shopping Club" cable channel. [Mattmiller Testimony, ¶ 5 (Reading Ex. 47 at 1-2)] In all respects the June 22-June 30 batch of recordings mirrored the content of the June 1, 1994 tape and the June 13-June 21 batch of recordings. [Mattmiller Testimony, ¶¶ 3-8 (Reading Ex. 47 at 2)]

108. The only PSAs reflected in any of the recordings are those produced for national consumption by the Missing Children Help Center located in Tampa, Florida. [Mattmiller Testimony, ¶ 9 (Reading Ex. 47 at 3)] Of the missing children highlighted in these PSAs, only 4 are identified as missing from or last seen in Pennsylvania and, of those 4, only one is identified as missing from or last seen in the Philadelphia-Wilmington-Atlantic City combined metropolitan area. [Mattmiller Testimony, ¶ 14, Attachment F (Reading Ex. 47 at 3, F1-F2)] None of the missing children is identified as missing from or last seen in Reading, Pennsylvania. [Mattmiller Testimony, ¶ 15 (Reading Ex. 47 at 4)]

**c. Adams' Proposed Transmitter**

109. On June 29, 1994, Adams preliminarily offered to enter into an option for the prospective use of a transmitter owned by Conestoga Telephone

& Telegraph Company ("Conestoga"). [Adams' Letter of Intent (Adams Ex. 68); Gilbert Testimony, Tr. 2480:11-22] Adams' Letter of Intent indicated Adams' desire to have an option to lease space to affix a UHF antenna to Conestoga's existing tower, and to occupy 500-600 square feet of an existing equipment building at the site. [Adams' Letter of Intent (Adams Ex. 68)] Conestoga subsequently advised Adams that any lease concerning the use of the Conestoga tower would be contingent on the ability to obtain proper zoning permits to construct an additional building or expand the existing structure. [Conestoga Letter dated August 8, 1996 (Reading Ex. 74)]

110. As of August 1996, more than two years after the Letter of Intent was sent to Conestoga, Adams and Conestoga had still not come to an agreement regarding Adams' use of the proposed transmitter site. [Conestoga Letter dated August 8, 1996 (Reading Ex. 74)] Thus, by letter dated August 8, 1996, Conestoga advised Adams that "[a]t this point, we have no agreement whatsoever regarding this site." [Conestoga Letter dated August 8, 1996 (Reading Ex. 74); Gilbert Testimony, Tr. 2531:1-23] By letter dated August 21, 1996, Gilbert, on behalf of Adams, responded: "I am totally aware of the obligations stated in your letter of August 8, 1996. . . . Please forward me an executed copy of the Restated Option Agreement and License/Lease Agreement with the appropriate check and we can finally be on our way after all the many, many years." [Adams Letter dated August 21, 1996 (Reading Ex. 75); Gilbert Testimony, Tr. 2532:9-2533:5]

111. The Conestoga Option Agreement was not executed until December 1996. [Adams Letter dated December 20, 1996, and Adams Check No. 1036 (Adams Ex. 71 at 1 and 3)] The 1996 Option Agreement was for a period of three years to begin with delivery of the executed agreement and payment to Conestoga. [Option Agreement, ¶ 1(A) (Adams Ex. 69 at 2)] Adams delivered the executed Option Agreement and payment to Conestoga under cover of a letter dated December 20, 1996. [Adams Letter dated December 20, 1996, and Adams Check No. 1036 (Adams Ex. 71 at 1 and 3)]

112. The Option Agreement was never renewed or extended during its effective term and, on or about December 20, 1999, expired by its own terms. [Gilbert Testimony, Tr. 2535:18-24; Adams Check No. 1080 (Reading Ex. 76); Option Agreement, ¶ 1(A) (Adams Ex. 69 at 2); Adams Letter dated December 20, 1996, and Adams Check No. 1036 (Adams Ex. 71 at 1 and 3)] On May 17, 2000, shortly before the Phase III hearing in this case, Adams sought to renew its option for the prospective use of the Conestoga tower. [Gilbert Testimony, Tr. 2535:18-24; Adams Check No. 1080 (Reading Ex. 76)]

## **6. Adams' Dealings with Telemundo**

113. Anne Swanson is an attorney with the law firm of Dowl Lohnes & Albertson in Washington, D.C. On behalf of her client, Telemundo, she spoke with Harry Cole, counsel for Adams, on April 30, 1999 about the possibility of settling this comparative renewal proceeding. [Swanson

Testimony, Tr. 2215:8-2217:6, 22119:12-2222:13, 2301:16-2302:1; Ms. Swanson's handwritten notes ("Swanson Notes") (Reading Ex. 52 at 4-5)] During their initial conversation, Ms. Swanson asked about Adams' level of interest in settlement, and at what amount its interest might ripen into acceptance. Mr. Cole informed her that Gilbert liked to do his own negotiating. [Swanson Testimony, Tr. 2215:11-17, 2219:3-24; Swanson Notes (Reading Ex. 52 at 4)] Later that day, Ms. Swanson again spoke with Mr. Cole, at which time he advised her that, while Gilbert planned to pursue the application, he would not say "no" to settlement. [Swanson Testimony, Tr. 2219:18-2221:8; Swanson Notes at 5]

114. Thereafter, that same day, April 30, 1999, Swanson telephoned Gilbert. [Swanson Testimony, Tr. 2219:18-2220:15, 2222:14-2224:18, 2302:2-14; Dow Lohnes & Albertson Telephone Report for April 30, 1999 (Reading Ex. 51 at 2)] During that conversation, Swanson asked Gilbert for a settlement figure and Gilbert responded that he could not give her a figure because Adams had not valued the station. [Swanson Testimony, Tr. 2225:18-2226:9; Swanson Notes (Reading Ex. 52 at 5)] Gilbert then committed Adams to pay one-third of the expense of obtaining an appraisal of Station WTVE. (Swanson Testimony, Tr. 2223:12-2224:18, 2230:17-2231:4; Swanson Notes (Reading Ex. 52 at 5); Letter from Gilbert to Swanson dated April 22, 1999 (Reading Ex. 57)] Gilbert also indicated that Adams would be



reasonable with respect to a possible settlement. [Swanson Notes (Reading Ex. 52 at 5)]

115. On June 2, 1999, Ms. Swanson received the appraisal. [Swanson Testimony, Tr. 2265:5-2266:8; Fax Transmittal Cover Sheet dated June 2, 1999 (Reading Ex. 62); Bond & Pecaro Appraisal (Adams Ex. 75 at 2-23)] The next day, Swanson faxed the appraisal to Cole along with a letter reconfirming that Adams had agreed to pay for a third of the cost. [Letter from Swanson to Cole dated June 3, 1999 (Adams Ex. 75)]

116. On June 7, 1999, Gilbert, Mr. Cole, Ms. Swanson and possibly Ann Gaulke, Telemundo's Vice President of Network Affiliate Relations, participated in a telephone conference to discuss the appraisal and settlement. [Swanson Testimony, Tr. 2268:6-2274:7, Swanson Notes (Reading Ex. 52 at 10-11)] Of particular concern during the June 7 conference was Reading's lack of involvement in the appraisal and settlement negotiations since the process required the participation of all three parties – the two applicants and the “white knight.” [Swanson Testimony, Tr. 2270:18-2272:2] At that time, Gilbert made it clear that he did not want his time wasted and that Adams was only interested in pursuing serious settlement negotiations. [Swanson Testimony, Tr. 2273:9-20; Swanson Notes (Reading Ex. 52 at 11)]

117. On July 14, 1999, Gilbert contacted Ms. Swanson to express Adams' interest in a Telemundo affiliation. [Swanson Testimony, Tr.

2277:11-2278:6; Swanson Notes (Reading Ex. 52 at 12)] The next day, Gilbert and Ms. Swanson further discussed the possibility of Telemundo providing Adams with Spanish language programming in the event that Adams' application were to be successful. [Swanson Testimony, Tr. 2281:2-2282:19; Swanson Notes (Reading Ex. 52 at 14)] And, on July 16, 1999, Ms. Swanson spoke with Mr. Cole and with Ms. Gaulke about "Adams' interest in affiliation and settlement." [Billing Records (Reading Hearing Ex. 50 at 10)] The Adams-Telemundo affiliation issue was, ultimately, tabled to avoid the possibility of a lawsuit by Reading which, at the time, operated WTVE as a Telemundo affiliate station. [Swanson Testimony, Tr. 2286:1-12]

118. On July 16, 1999, Ms. Swanson once again discussed settlement with Adams. [Swanson Testimony, Tr. 2284:10-2285:5; Swanson Daytimer for July 16, 1999 (Reading Ex. 54 at 4)]

## **7. Adams' Counsel**

119. At all times in the preparation of its aborted challenge to Channel 66, Marlborough, Massachusetts, and its present challenge of WTVE, Adams has been represented by B&C. [Gilbert Testimony, Tr. 1018:15-24, 1042:11-1043:20] Adams' fee agreement with B&C provides that B&C attorneys are to be paid at a rate that is \$100 per hour less than their usual hourly rates with respect to the prosecution of Adams' comparative

application (i.e., \$125/hour versus \$225/hour). [Adams Fee Agreement (Reading Ex. 21); Gilbert Testimony, Tr. 1019:19-22] The fee agreement further provides that B&C attorneys would be paid twice their usual hourly rate (i.e., \$450/hour) in the event that Adams' application is granted or if the application is dismissed in a settlement on terms that are "economically favorable," including a settlement for only reasonable and prudent expenses [Adams Fee Agreement (Reading Ex. 21)] Although Adams' fee agreement with B&C was signed on June 30, 1999, it memorializes an oral agreement that was reached in 1993. [Gilbert Testimony, Tr. 1019:19 – 1020:19]

120. B&C had previously represented Monroe in the Video 44 case. [Monroe Fee Agreement (Reading Ex. 20); Gilbert Testimony, Tr. 1012:8 – 1013:6] Monroe paid B&C "a substantial bonus" for its work in the Video 44 case. [Gilbert Testimony Tr. 1014:13-14, 1015:11-16]

### **III. Conclusions Of Law**

#### **A. The Comparative Issue**

##### **1. Introduction**

121. On the comparative issue, Reading's claim to a renewal expectancy will be dispositive if awarded. If no renewal expectancy were awarded, then the comparison between Reading and Adams would be governed by the Commission's First Report and Order in Implementation of

Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, 13 FCC Rcd 15,920 (1998) ("First Report and Order"). The First Report and Order discussed the impact of the Court's decision in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993) ("Bechtel II"), and held that future comparative renewal cases should be governed, to the greatest extent possible, by those factors previously applied by the Commission other than the integration factor ruled invalid in Bechtel II. See First Report and Order, ¶ 214:

We believe the fairest and most expeditious approach in these cases is to decide them as nearly as possible according to the standards in effect prior to Bechtel II. We accomplish this by deciding them on a case-by-case basis, affording all parties the flexibility to present evidence they deem relevant under the standard comparative issues, and at the same time adhering to the criteria for evaluating the renewal applicant's performance during the license term to determine its eligibility for, and the comparative significance of, any renewal expectancy.

122. Diversification of media outlets is a comparative factor that is independent of the integration credit that was invalidated in Bechtel II. For purposes of the following analysis, Reading will assume that diversification remains a valid comparative factor. However, Reading submits that diversification has been rendered meaningless as a comparative factor, at least with respect to out-of-market media interests. The fact that a Reading principal holds media interests entirely outside the Reading, Pennsylvania

market simply has no relevance to viewers in Reading, Pennsylvania or the surrounding area.

123. Comparative coverage is independent of the integration credit. Accordingly, comparative coverage remains a valid comparative criterion.

124. Local residence, civic involvement and broadcast experience all were previously regarded as qualitative enhancement factors for principals proposing to be integrated into station management. Although Bechtel II invalidated the integration criterion, continued credit for local residence, civic involvement and broadcast experience is in no way inconsistent with Bechtel II. The Bechtel II court did not find the "enhancement factors" to be arbitrary and capricious – in fact, part of the court's reasoning in striking down the integration preference was that "the 'quantitative' portion of the integration credit tend[ed] to swamp the qualitative." 10 F.3d at 882. The court recognized the value of local ownership (and implicitly, local civic involvement) in its criticism of the integration credit on the grounds that "[f]amiliarity with a community seems much more likely than station visits or correspondence to make one aware of community needs," and that "even long-time local residence generates at most a 'qualitative' enhancement of an applicant's integration credit." Id. at 885. Accordingly, the Commission's mandate in the First Report and Order suggests that comparative credit should be awarded for an applicant whose principals can claim local residence, local civic involvement and past broadcast experience.

## **2. Comparative Coverage**

125. Reading's proposed coverage, authorized in its construction permit, exceeds Adams' proposed coverage by a significant margin (7,362,932 people versus 4,260,920 people). However, the coverage area of both proposals is well-served by existing services, so the preference for Reading's coverage proposal is slight. See Beach Broadcasting L.P., 6 FCC Rcd 4485 (1991).

## **3. Diversification of Media Outlets**

126. Mr. Parker of Reading holds interests in WHCT(TV), Hartford, Connecticut (local marketing agreement), KVMD(TV), Twentynine Palms, California (100% ownership), International Broadcast Station KAIJ, Dallas, Texas (100% ownership through TIBS) and an FM translator construction permit in Upland, California (100% ownership). Adams and its principals hold no attributable media interests. However, because Mr. Parker's interests are so distant from Reading, Pennsylvania and Mr. Parker holds less than a 50% interest in Reading, the diversification preference for Adams is slight. See Isis Broadcasting Group, 8 FCC Rcd 7040 (1993).

#### **4. Local Residence**

127. Reading is primarily owned by shareholders who presently reside and/or have resided within the city limits of Reading, Pennsylvania or within the predicted Grade B contour of WTVE. Adams' principals claim no local residence credit. Accordingly, Reading is entitled to a preference for local ownership. See Edward F. and Pamela J. Levine, 8 FCC Rcd 8401 (1993).

#### **5. Civic Activities**

128. Several of Reading's stockholders have been involved in local civic activities in Reading or within WTVE's Grade B service area. In addition, Reading's quarterly issues and programs lists show that Reading itself has played a positive role in community activities. Adams and its principals claim no credit for local civic activities. Accordingly, Reading is entitled to a preference for civic involvement. See Gloria Bell Byrd, 8 FCC Rcd 7124 (1993).

#### **6. Past Broadcast Experience**

129. Reading is entitled to credit for the past broadcast experience of Micheal Parker, Jack Linton and Frank McCracken. Adams claims no credit

for past broadcast experience. Accordingly, Reading is entitled to a preference for past broadcast experience. See Harry S. McMurray, 8 FCC Rcd 8554 (1993).

## **7. WTVE's Renewal Expectancy**

### **a. Introduction**

130. The Cable Television Consumer Protection and Competition Act of 1992 directed the Commission to determine whether home shopping programming on broadcast television stations served the public interest, convenience and necessity. If the Commission concluded that such stations were not serving the public interest, convenience and necessity, the licensees were to be afforded a reasonable period within which to provide different programming, and they were not to be denied a renewal expectancy merely because of their home shopping programming. See Communications Act of 1934, as amended, 47 U.S.C. § 614(g)(2).

131. In its subsequent rulemaking, the Commission determined that home shopping stations do serve the public interest. See Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 5321 (1993) ("Home Shopping Report and Order"). The Commission based this determination on its findings that home shopping programming received significant viewer support, provided a competitive



alternative to nonbroadcast services supplying similar programming, and provided an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner. Home Shopping Report and Order at ¶¶ 6, 18, 28. In particular, the Commission found that the format of home shopping stations, in which public service programming is presented for the most part in lengths shorter than half an hour, does not preclude those stations from meeting their public service obligations. Id. at ¶¶ 29-31.

132. Home shopping television stations are obligated to meet the Commission's standards for public affairs programming responsive to issues confronting the local community and complying with Commission rules, including the Commission's rules on children's programming. Id. at ¶ 9. This obligation is analyzed under five criteria:

1. The licensee's efforts to ascertain the needs, problems and interests of its community;
2. The licensee's programmatic response to those ascertained needs;
3. The licensee's reputation in the community for serving the needs, problems and interests;
4. The licensee's record of compliance with the Communications Act and FCC rules and policies; and
5. The presence or absence of any special effort at community outreach or towards providing a forum for local self-expression.